United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

ESTIMATED TIME FOR ARGUMENT-
20 minutes

TO BE ARGUED BY JOSEPH DI NARDO

UNITED STATES DISTRICT COURT
SECOND CIRCUIT COURT OF APPEALS

B
P/S

IDOTHA KEY

Plaintiff- Appellant

vs-

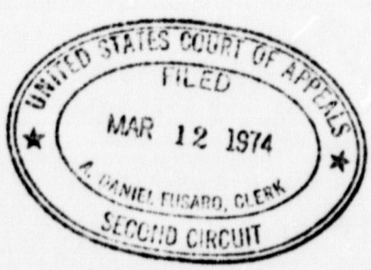
ELLIOT RICHARDSON, Secretary of Health, Education and Welfare of the United States of America Social Security Administration

Defendant-Appallee

CIVIL NO. 1972-13

BRIEF OF APPELLANT

COLLINS & COLLINS
Attorneys for Plaintiff-Appellant
JOSEPH DI NARDO, of counsel
Office & P. O. Address
Suite 464 Statler Hilton
Buffalo, New York 14202



I-N-D-E-X

TABLE OF CASES AND STATUTES CITED:

PRELIMINARY STATEMENT

This is an appeal brought by Mrs. Idotha Key a 59 year old Black indigent, under section 205 (g) of the Social Security Act [42 U.S. C 405 (g)[to review a decision of District Judge John Henderson, United States District Court for the Western District of New York, affirming a decision of the Social Security Administration denying plaintiff's application for widow's disability insurance benefits. Plaintiff's and defendant's each moved for summary judgment pursuant to Fule 56 of the Federal Rules of Civil Procedure and a decision was granted in favor of defendant.

Plaintiff filed an original application for benefits on August 12, 1969, stating that her disability began on June 15, 1959. This application was denied January 21, 1970. Plaintiff requested reconsideration on April 20, 1970 and the initial decision was affirmed by letter dated November 24, 1970. A hearing was held on June 4, 1971 and a decision dated June 12, 1971 found that plaintiff did not meet the requirements for widow's disability as stated in Section 223(d) of the Social Security Act, as amended. Final action of the Appeals Council affirming the decision of the hearing examiner was dated November 23, 1971.

STATEMENT OF ISSUES

I. The plaintiff contends that she has been denied due process of law by the failure of the Social Security Administration to provide her with reasons why her original application for widow's disability benefits was denied prior to the decision rendered by the Administrative Judge after hearing.

II. The decision of the Administrative Judge was in error and against the facts presented and the law.

POINT I

PLAINTIFF WAS DENIED DUE PROCESS OF LAW BY FAILURE OF THE SOCIAL SECURITY ADMINISTRATION TO SET FORTH REASONS FOR DENYING PLAINTIFF'S APPLICATION AT ORIGINAL LEVEL.

FACTS

By letter of January 21, 1970, the claimant was notified by the Social Security Administration, (hereinafter called the "Agency"), that her claim for disability benefits had been denied. No reason for the denial was stated. Subsequent to the notice of denial, the Claimant contacted the Legal Aid Bureau of Buffalo, Inc., and indicated her desire to appeal from the adverse ruling.

By letter of February 27, 1970, the Legal Aid Bureau notified the Agency that that law firm represented the Claimant, and requested that the Agency set forth the specific reason for the denial, in addition to requesting copies of any exhibits that may have been entered in the case. There was no reply to this letter. Neither was there any reply to the follow up letters from the Bureau, dated March 30, 1970 and April 21, 1970. In fact, not until the Bureau wrote to the then Secretary of Health, Education and Welfare, Robert H. Finch, on May 18, 1970, did the Agency finally respond to the communications of the Bureau. However, this reply, dated May 27, 1970, contained nothing more than a statement that the members of Commissioner Ball's staff were giving the matter attention. Again the Agency was completely silent as to the reason for the denial of the applicant's claim.

By letter of November 24, 1970, the Claimant was notified that her claim was again denied after reconsideration. Aside from the aforementioned letter of Commissioner Ball, this letter

was the first recognition that the Claimant was being represented by an attorney. (A copy of the Reconsideration Notice was sent to the Bureau).

On June 4, 1971, the Claimant's matter came on for hearing before Thomas Artale, Hearing Examiner, who affirmed the decision rendered at the lower levels.

The decision of the Hearing Examiner, for the first time, set forth the specific reasons for denying the claimant's application for disability benefits, i.e., for the first time pertinent statutes and regulations referring to definitions and enumerated impairments were cited.

It is obvious from the above and from a glance at the body of Law and regulations that one must know to properly persue a claim for disability under the Social Security Act that the failure to provide plaintiff with the specific reasons for her original denial disadvantaged the plaintiff from properly framing her case. Plaintiff has the burden under the act to show that she meets the applicable criteria. Act 3225(d) (5);.Franklin vs. Secretary of HEW 393 F. 2D 640 (2nd cir., 1968). This burden and the lack of proper frame of reference from which to proceed denied plaintiff her right to due process.

The Social Security Administration is a large bureaucratic governmental agency whose function is to serve the people. The plaintiff is one individual, uneducated and pursuing a right she is unclear of at the least. To refuse to grant her every possible and reasonable piece of information necessary to prepare even the bare essentials of proper case is a perversion of our system of laws and government. It is unfair to assume that a single individual can bear the burden of a technical and legal battle with the Department of Health Education and Welfare without

being given the proper tools at the on set. To argue, as does the defendant, that an explanation accompanying a denial of plaintiff's claim on reconsideration was sufficient is merely form with little substance. It certainly places the plaintiff at the bottom of a steep hill to climb and in virtual darkness.

For the reasons stated above, plaintiff respectfully requests that the decision of the District Court be reversed.

POINT II

THE DECISION OF THE HEARING EXAMINER IS CONTRARY TO LAW AND FACT.

Medical reports and oral testimony of the administrative hearing show that plaintiff suffers from: degenerative arthritis, removal of her knee cap is suggested by a qualified physician, she is under surveillance for the possibility of the exsistence of active tuberculosis, pain shoots up through her arms, she cannot sit for any length of time and numerous other disabilities. See appendix pages 1 to 14 . Dr. Bertola, selected by the defendent reports, "... She would not be expected, however, to perform any heavy lifting or standing over a long period of time because of degenerative arthritis." (see appendix page 9). Dr. Bertola goes on to indicate that the plaintiff would be able to do light bench work and stand for a period of under two hours, sit for a period of time and lift objects lighter than twenty pounds. The plaintiff is 59 years old.

According to Dr. Bertola's report then, the only work that plaintiff might be able to undertake, in terms of her work history, is the job of bobby pin carder, depending upon how long the plaintiff can sit. (appendix page 9) Dr. Bertola at least implies that this period might not be too long. The report seems

to be in harmony with plaintiff's complaint that she can no longer sit at her sewing machine the way she used to. The fact that plaintiff complains of pain in her fingers going up to her neck has gone disregarded.

While a diagnosis of inactive tuverculosis may not in itself call for a categorization of disablement, it is submitted here that it is proper to take it into consideration where other factors of disability are present. It should also be noted that the possibility of activeness has not definitely been rejected. The plaintiff is still under observation. (see appendix page 10, 11)

In conclusion, Plaintiff again stresses the point that it is highly unlikely, if not impossible, to hold herself out, and be accepted by a prospective employer as one who could be depended upon to go to work everyday and perform her job effectively and competently for eight hours a day.

Certainly the court must read the Acts of Congress in the light of reality and not in a legal vacuum. The plaintiff cannot work because she is disabled; because she is disabled no one would hire her for what she is competent to do. The plaintiff again respectfully requests that the decision of the District Court be reversed.

A-P-P-E-N-D-I-X

236-10-4461

113

INTERNAL MEDICINE
RAMSDELL GURNEY, M.D.
GEORGE F. KOEPF, M.D.
MURRAY S. HOWLAND, JR., M.D.
WARREN R. MONTGOMERY, JR., M.D.
IRWIN FRIEDMAN, M.D.
RICHARD G. COOPER, M.D.
CHARLES M. ELWOOD, M.D.
ALFRED M. STEIN, M.D.
PHILIP D. MOREY, M.D.

Buffalo Medical Group
73 HIGH STREET
BUFFALO, N. Y. 14203
TELEPHONE, 882-1500
MRS. HOWARD C. SCHELLENBERG
BUSINESS MANAGER

SURGERY
JOHN CLARKE, M.D.
JAMES LIPSON, M.D.
OPHTHALMOLOGY
CHARLES H. ADDINGTON, M.D.
ALBERT M. KRAUS, M.D.
RADIOLOGY
KENNETH H. SEAGRAVE, M.D.

August 26, 1969

Department of Health, Education and Welfare
Social Security Administration
District Office
120 W. Mohawk Street
Buffalo, N.Y. 14202

Re: Mrs. Idotha Key
236 Cedar Street
Buffalo, N.Y.

MEDICAL REPORT

Mrs. Idotha Key has been under my care since October of 1965. At that time she stated that she had severe joint pains of approximately 3 years' duration with more noticeable involvement in her shoulders and knees. At that time a diagnosis of degenerative arthritis and generalized osteoporosis was made.

The patient has been treated with salicylates, indomethacin and local injections of corticosteroid into joints which were acutely swollen during the past few years.

Mrs. Key is seen approximately every month to six weeks as an out-patient. She continues to have moderately severe involvement in both her knee joints and her left hip joint.

Her current medications include Ascriptin, 3 tablets, q.i.d., and indomethacin, 25 mg., t.i.d.

Signed: A. M. Stein
Alfred M. Stein, M.D.

AMS:gfr

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7

INTERNAL MEDICINE
RAMSDELL GURNEY, M.D.
GEORGE F. KOEPF, M.D.
MURRAY S. HOWLAND, JR., M.D.
WARREN R. MONTGOMERY, JR., M.D.
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RICHARD G. COOPER, M.D.
CHARLES M. ELWOOD, M.D.
ALFRED M. STEIN, M.D.
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Buffalo Medical Group
73 HIGH STREET
BUFFALO, N. Y. 14203
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118

SURGERY
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OPHTHALMOLOGY
CHARLES H. ADDINGTON, M.D.
ALBERT M. KRAUS, M.D.
RADIOLOGY
KENNETH H. SEAGRAVE, M.D.

December 17, 1969

State Of New York
Department of Social Services
Bureau of Disability Determinations
110 William Street
New York, New York 10038

Re: Mrs. Idotha Key
Social Security
No. 094-12-7206

Att: Joseph J. Oliva, M.D.

SUPPLEMENTARY MEDICAL REPORT

Specific x-ray findings in the case of Idotha Key: X-rays of the lumbosacral spine taken on Feburary 19, 1966 showed generalized osteoporosis and mild arthritic changes with small spurs on the opposing margins of L5 and 4. There were also some mild reactive changes in the lumbosacral apophyseal joints.

Laboratory reports: Urinalysis, blood counts, blood sugar, blood urea nitrogen have been in the normal range. On May 26, 1969 a latex fixation test was reported as slightly positive.

Mrs. Key has pain, swelling and crepitation in both knee joints, the left knee joint being considerably more affected than the right. She also has a pin and limitation of motion in the right hip joint. At times during an exacerbation of her arthritic complaints she does have difficulty in ambulation because of apin, swelling and limitation of motion.

Her current medications included Indocin, 25 mgs., q.i.d., buffered aspirin, two tablets, five times each day and Valium, 5 mgs., b.i.d.

I trust this information will be helpful to you in your further evaluation of Mrs. Key's claim for disability.

Signed: Alfred M. Stein
Alfred M. Stein, M.D.

AMS:mev

CASE [illegible]
PAGE No. 27

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

121

Form Approved.
Budget Bureau No. 72-R510.1

qrl)

MEDICAL REPORT
(General)

DATE OF THIS REPORT: 2/10/70

Notice to Physician:
Please include sufficient details of history, physical and diagnostic findings, clinical course, therapy and response to enable a reviewing physician to make an independent determination as to the severity and duration of the impairment.

(1) IDENTIFYING INFORMATION (To be completed by Requesting Office)	PATIENT'S NAME	DATE OF BIRTH	SOCIAL SECURITY ACCOUNT NO
	IDOTHA KEY	10/5/12	336-10-4467
	WAGE EARNER'S NAME (If different from patient)	ADDRESS OF REQUESTING OFFICE	
	Eddie Key --	120 W MOHAWK ST BUFFALO NY 14202	
	NAME OF DOCTOR		
	230-10-4467		

I. HISTORY: (Give complaints, past and present, clinical course, including therapy and response.)

MRS IDOTHA KEY HAS BEEN UNDER MY CARE SINCE OCT. 28, 1965.

SHE HAS HAD PAINS IN HER JOINTS SINCE 1962.

SHE HAS DEGENERATIVE ARTHRITIS INVOLVING HER HANDS, SHOULDERS, KNEES AND HIPS. ON SEVERAL OCCASIONS SHE HAS HAD AN EFFUSION OF HER LEFT KNEE JOINT.

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DATE OF INJURY OR FIRST SIGNS OF ILLNESS	DATE IMPAIRMENT PREVENTED WORK	DATE YOU FIRST EXAMINED PATIENT	FREQUENCY OF VISITS	DATE OF LAST EXAMINATION
1962	1965?	10/28/65	EVERY 6-8 WEEKS	2/27/70

FORM SSA-826 (7-67)

II. PHYSICAL FINDINGS: Please show all pertinent findings (with dates).

HEIGHT	WEIGHT
5'2"	128 1/4

PAIN, SWELLING AND LIMITATION OF MOTION OF THE FOLLOWING JOINTS

LEFT SHOULDER
LEFT ELBOW
BOTH WRISTS
RIGHT HIP
BOTH KNEE JOINTS
BOTH SACRO ILIAC JOINTS

III. LABORATORY AND SPECIAL STUDIES: Give results with dates. (Hemoglobin, Hematocrit, Sedimentation rate. Cerebrospinal fluid, Blood chemistry, Urinalysis, Sputa (smear, culture), Serology, X-rays, Electrocardiogram, Liver function, Bronchoscopy, Myelogram, Biopsy, Pulmonary function, Renal function, Psychometric, etc.)

5/26/69 — LATEX FIXATION POS.

5/26/69 - SED RATE - 35

HB - 13.2

WBC 5,300

CHOLESTEROL - 320

IV. DIAGNOSES:

1. DEGENERATIVE ARTHRITIS
2. OSTEOPOROSIS
3. HYPER CHOLESTEROLEMIA

REPORTING PHYSICIAN'S NAME AND ADDRESS	SIGNATURE	TITLE
ALFRED M STEIN MD 85 HIGH ST BUFFALO N.Y. 14203	Alfred M Stein	MD
	TELEPHONE NUMBER 886 - 3460	DATE 7/2/70

REPORT OF CONTACT

(USE INK OR TYPEWRITER)

ACCOUNT NUMBER (and symbol): 4467

TO: REVIEWING OFFICE: NY P BIR CH SF DBS KC DFC SA

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON: Key 124

PERSON(S) CONTACTED AND ADDRESS(ES): ☐ WE OR SE PERSON ☒ OTHER (Specify)

Alfred Stein, M.D.

Buffalo, N.Y.

CONTACT MADE: ☐ DO ☐ BO ☐ CS ☐ HOME ☒ PHONE ☐ OTHER (Specify)

DATE OF CONTACT: 4/20/70

SUBJECT

OUT: 716/845-6423

PURPOSE: To discuss claimant's current condition.

FACTS: Dr. Stein stated that the claimant has osteoarthritis of the knees which is her main problem. He states that she has exacerbations every few months and that her knees swell and they must be tapped for fluid. She is constantly on antiinflammatory medication. He states that when she is not having an exacerbation, she can walk to the store and do things around the house, but when she is having attacks she is entirely disabled. He stated that prolonged standing for her is a problem.

NEXT ACTION: Determination.

EXHIBIT NO. 30

B. Stinson

SIGNATURE

DISTRICT OFFICE

☐ CR ☐ FR ☐ SR ☐ CLAIMS CLERICAL ☒ OTHER (Specify) Disability Examiner

DATE OF REPORT

PAGE 1 OF 1

FORM SSA-5002 (2-68) BS:eap RCH 1 #9 492 D4/20 4/22

GPO 1969—348-16-80333-1 329-935

DO NOT WRITE IN MARGIN

BENJAMIN E. OBLETZ, M.D.
BERTRAM G. KWASMAN, M.D.
JAMES M. COLE, M.D.
IRVING STERMAN, M.D.

ORTHOPEDIC SURGERY

SUITE 805
50 HIGH STREET
BUFFALO, NEW YORK 14203

July 2, 1970

RE: Idotha Key

Dr. Alfred Stein
73 High Street
Buffalo, New York 14203

Dear Doctor Stein:

On July 1, 1970, Mrs. Key was re-evaluated in the office at your request. Your aspiration and injection of the left knee did lead to clinical improvement. However, on physical examination there is marked crepitation with patellofemoral motion as well as pain with this type of movement. I x-rayed the knee in the office; and in multiple projections, one sees the arthritic lipping of the patella as well as spurs on the articulating surfaces of the femoral condyles and the tibial plateau surfaces.

In addition to the left knee pain, she has a chronic right sacroiliac area of pain. I elected to inject and block the right sacroiliac with a mixture of 1 percent Xylocaine plus Depo-Medrol. I further suggested to Mrs. Key that she consider the possibility of being admitted to the Buffalo General Hospital for the purpose of performing a patellectomy of the left knee. She will talk this over with her family and inform me of her decision.

Warmest personal regards.

Very truly yours,

Bert

Bertram G. Kwasman, M.D.

BGK:sg

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NORMAN HEILBRUN, M.D.
CHARLES BERNSTEIN, M.D.
BERKELEY ZINN, M.D.
MICHAEL J. MELZER, M.D.
85 WEHRLE DRIVE
BUFFALO, NEW YORK 14225

70 SEP 21 NY 12 26

9-15-70

Dr. Oliva

RE: Idotha Key S-33689

9-11-70

AP VIEWS OF THE RIGHT SHOULDER WITH THE HUMERUS IN INTERNAL AND EXTERNAL ROTATION.

While no localized traumatic nor destructive bone lesion is seen in the bony components of the right shoulder, and the joint zones and articular relationships are normal in appearance, there are mild degenerative sclerotic and pseudocystic changes in the greater tuberosity of the humerus. There is no soft tissue abnormality.

PA, LATERAL AND TUNNEL VIEWS OF THE LEFT KNEE.

There are moderately severe degenerative arthritic changes in the knee with moderate size marginal spurs on the intercondyloid spines of the tibia, the margins of the tibial plateau and femoral condyles as well as on the patella. There are several rather small osteo-cartilagenous loose bodies, one at the superior margin of the patella, 2 other smaller bodies each about 2 x 3 mm along the anterior aspect of 1 of the femoral condyles just below the patella and another smoothly rounded bony density along the superior lateral margin of the patella. This last is visible in both the PA and axial views and its smooth appearance suggests that this may represent an accesory center of ossification in the patella. There is a small localized zone of increased bony density in the medial distal portion of the left femoral shaft, the appearance being that of a benign bone island. There is no radiographic evidence of fluid in the knee joint and there is no other soft tissue abnormality.

CONCLUSION: THERE ARE RATHER MILD SCLEROTIC AND PSEUDOCYSTIC CHANGES IN THE GREATER TUBEROSITY OF THE RIGHT HUMERUS WITH NO OTHER ROENTGEN ABNORMALITY OF THE RIGHT SHOULDER.

THERE ARE MODERATELY SEVERE DEGENERATIVE ARTHRITIC CHANGES IN THE LEFT KNEE WITH SEVERAL SMALL OSTEO-CARTILAGENOUS LOOSE BODIES, AS MORE FULLY DESCRIBED ABOVE.

Thank you for referring this patient.

Sincerely,

Berkeley Zinn

Berkeley Zinn, M.D.

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b

cy to: Dr. Bertola

FRANCIS J. HALEY, M. D.
JOHN H. RING, JR., M. D.
IGNATIUS S. BERTOLA, M. D.
ORTHOPEDIC SURGERY

88 WEST UTICA STREET
BUFFALO, N. Y. 14209
884-7993

88 WEHRLE DRIVE
BUFFALO, N. Y. 14228
838-7402

70 OCT 13 NY 1:22

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October 7, 1970

Joseph J. Oliva, M.D.
Bureau of Disability Determinations
110 William Street
New York, New York

Re: Idotha Key
236 Cedar Street
Buffalo, New York
Soc. Sec. No. #236 10 4467

Dear Dr. Oliva:

I have examined Idotha Key in my office on September 11, 1970 at your kind request.

This lady stated she is suffering from a pinched nerve in her right hip. She has had arthritis of her left knee and bursitis and arthritis of her right shoulder.

This lady stated she has not worked since World War II, but has been under treatment for arthritis in her hands, shoulders, knees, and hips.

On physical examination, she has a full range of motion of both shoulders and her spine. She, likewise, has a full range of motion of her left knee. There is, however, a moderate degree of effusion in her left knee. There is no neurologic involvement in either extremities and there is no atrophy.

X-ray examination of her right shoulder shows mild sclerosic changes over the greater tuberosity of her right humerus which are very minimal in nature. There is, likewise, degenerative arthritic changes in her left knee. There are no other abnormalities in her hands, feet, or other extremities noted.

She has a full range of motion of her spine. I feel that this lady does have degenerative arthritis, especially of her left knee which is commensurate with her age group. I feel that she is able to work in accordance with any other woman her age group. I do not feel as though she is able to do any heavy lifting or standing over a long period of time, because of degenerative arthritis which is commensurate with any one in her age group.

I do feel that she is able to do light bench work and stand for periods of under two hours, sit for an unlimited period of time, and lift objects lighter than 20 pounds.

Thank you for allowing me to see this interesting patient.

Sincerely,

I. S. Bertola

Ignatius S. Bertola, M.D.

ISB:nm
enc.

CASE NO. _____

EXHIBIT NO. 35

15

COUNTY OF ERIE
HEALTH DEPARTMENT
601 CITY HALL
BUFFALO, N. Y. 14202

WILLIAM E. MOSHER, M. D.
COMMISSIONER

DAVID E. BARRY, P. E.
DEPUTY COMMISSIONER

February 17, 1971

Mr. Aaron Goldforb
Legal Aid Bureau of Buffalo, Inc.
Walbridge Building
43 Court Street
Buffalo, New York 14202

Re: Idotha Key
236 Cedar Street
Buffalo, New York

B. D. 10/5/11
Chart # 306035

Dear Mr. Goldforb:

The above named patient first came to our attention 10/17/68. She was self-referred and gave no history of exposure to pulmonary tuberculosis. She did mention that she had some bronchial asthma and that she had an occasional cough with occasional dyspnea following asthmatic attacks. The x-ray examination showed the parenchyma of both lungs to be clear. The heart was within normal limits. A tuberculin skin test done on her at that time was reported as negative. The diagnosis at that time was essentially negative chest.

She was re-examined 11/14/69 and an x-ray at that time showed no marked or essential change as compared with the previous x-ray taken. The diagnosis was again essentially negative chest.

She was next seen 10/13/70 and an x-ray taken at that time again showed no marked or essential change as compared with the previous x-ray of 11/14/69. A skin test, however, was repeated at the time and showed a definite 25 mm. positive reaction. Because of this, the examiner suggested that the patient be placed on prophylactic chemotherapy and with Dr. Stein's permission, drug therapy was started 11/17/70. This consisted of 12 gm. of PAS and 300 mgm. of INH with B-6 daily.

CASE NO. _____
EXHIBIT NO. 38
t2/77

- Continued -

On December 14, 1970, the patient stated that she showed gastric intolerance to the PAS medication and this was discontinued at the time of her visit 12/15/70. However, she was to continue with her INH therapy. An x-ray examination of 12/15/70, likewise, showed no change as compared with previous x-rays taken.

She was last seen in the clinic 2/1/71 at which time she stated that she had occasional chest pains, occasional non-productive cough and occasional shortness of breath during an attack of asthma. An x-ray examination showed no marked or essertial change as compared with previous x-rays. Both lungs appeared to be clear. The heart was within normal limits.

Diagnosis: Primary complex, inactive, under therapy.

She is to be re-examined 5/3/71.

Very truly yours,

A. Arthur Grabau, M.D. Director
Division of Tuberculosis Control

Theodore F. Ciesla, M.D.
Assistant Director

TFC/bn

BUFFALO MEDICAL GROUP

▼ INTERNAL MEDICINE
RAMSDELL GURNEY . . . . M.D.
GEORGE F. KOEPF . . . . M.D.
MURRAY S. HOWLAND, JR. . M.D.
WARREN R. MONTGOMERY, JR. M.D.
IRWIN FRIEDMAN . . . . . M.D.
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CHARLES M. ELWOOD . . . M.D.
ALFRED M. STEIN . . . . M.D.
PHILIP D. MOREY . . . . . M.D.
OWEN G. BOSSMAN . . . . M.D.
WILLIAM A. FLEMING, JR. . . M.D.

▼ SURGERY
JOHN CLARKE . . . . . M.D.
JAMES UPSON . . . . . M.D.
F. FERO SADEGHIAN . . . M.D.

▼ OPHTHALMOLOGY
CHARLES H. ADDINGTON . M.D.
ALBERT M. KRAUS . . . . M.D.

▼ RADIOLOGY
KENNETH H. SEAGRAVE . . M.D.

▼ BUSINESS MANAGER
MRS. HOWARD C. SCHELLENBERG

85 HIGH STREET
BUFFALO, N.Y. 14203
(716) 886-3400

February 18, 1971

Mr. Aaron Goldfarb, Attorney
Department of Social Welfare
210 Pearl St.
Buffalo, N.Y.

Re: Mrs. Idotha Key
236 Cedar St.
Buffalo, N. Y.

INTERIM REPORT

Mrs. Idotha Key was seen on September 26, 1969. At that time she weighed 135 pounds. She described some chest pains but noted some improvement in her knee and hip joints. Again she was given a prescription for Indocin and advised to return in approximately ten weeks. She had lost six pounds and was advised to continue this type of weight reduction program.

Mrs. Key was seen on December 12, 1969. She was previously seen in the Erie County Health Department Clinic in City Hall on October 13, 1969. At that time they noted a conversion in her tuberculin reaction and suggested that she probably had a primary infection with tuberculosis the activity of which was undetermined but probably inactive. In view of the conversion in the tuberculin reaction at that time they felt that she would be a candidate for chemotherapy in the form of isoniazid, 300 mg., pyridoxine, 30 mg., and PAS, 12 mg., daily for a period of at least 12 months. I concurred with this therapy and it was begun. When Mrs. Key was seen again in my office on December 12, 1969, she complained bitterly of pain in both knees and she was continued on Indocin, buffered aspirin and Valium, 5 mg., b.i.d.

Her next visit was on February 27, 1970, at which time she continued to note knee and hip pain. The same prescriptions were continued.

On May 13, 1970, she noted pain and swelling in both knees. On physical examination the left knee was quite swollen and a left knee effusion was noted. Her prescriptions were continued.

On June 26, 1970, again the left knee effusion was quite prominent. The left knee was aspirated, and she was advised to use Butazolidin alka, 100 mg., q.i.d. for approximately one week, and she was advised to seek a return appointment with Dr. Bertram Kwasman.

On July 30, 1970, Mrs. Key was again seen. At this time her left knee and left hip were quite painful. Again her physical findings were unchanged except that the effusion in her left knee was now decreased. She continued on Indocin and she was told to return in approximately 8 weeks.

On September 24, 1970, she was seen and stated that her knees were somewhat better. She had seen Dr. Bertola on September 11, 1970, at which time she had an orthopedic examination.

On December 4, 1970, she complained of pain in the right hip. Her prescriptions were

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12727

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continued. She was still being maintained on her antituberculous therapy.

Mrs. Key was last seen on February 4, 1971, at which time she complained of pain in her right hip and she stated she saw Dr. Kwasman recently, and there was no change in her therapy or physical findings.

Signed: Alfred M. Stein, M.D.

AMS:gfr

BENJAMIN E. OBLETZ, M.D.
BERTRAM G. KWASMAN, M.D.
JAMES M. COLE, M.D.
IRVING STERMAN, M.D.

ORTHOPEDIC SURGERY

SUITE 805
50 HIGH STREET
BUFFALO, NEW YORK 14203

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February 18, 1971

RE: KEY, Idotha M.

Onset: 30 Years

Mr. Aaron Goldfarb
Legal Aid Bureau
Walbridge Building
Buffalo, New York 14203

Dear Mr. Goldfarb:

I first saw Mrs. Key in my office on March 31, 1967 at the request of her personal physician Dr. Alfred Stein and diagnosed her as having some degenerative arthritis of the left knee, as well as, chronic low back pain with sciatica.

She was treated for this problem and made a symptomatic improvement.

She was next seen in the office on July 1, 1970 at which time I diagnosed degenerative arthritis of both knees and again a flare-up of her chronic low back pain.

Currently I am treating her for an acute flare-up of her low back problem and giving her physiotherapy.

In summary, this patient has degenerative arthritis of her knees and chronic low back pain which I feel is on the basis of degenerative arthritis as well.

Very truly yours,

BERTRAM G. KWASMAN, M. D.

BGK/cs

Dictated, not read.

EXHIBIT NO. 41

20

UNITED STATES COURT OF APPEALS

IDOTHA KEY

– against – Plaintiff,

ELLIOT RICHARDSON, Secretary of Health, Education and Welfare of the United States of America Social Security Administration Defendant.

AFFIDAVIT OF SERVICE ON AN INDIVIDUAL OR CORPORATION

STATE OF NEW YORK
COUNTY OF ERIE } ss.:

JOSEPH A. COLLINS, being duly sworn, deposes and says that he (she) is over 18 years of age, not a party to the action; and that he (she) served the annexed ~~Summons~~ XXXXX Brief on the defendant(s) MARY ROBERTS, Agent for U.S. Attorney, John Elfwin named herein, in the following manner: Complete one of the following BLOCKS, and the DESCRIPTION BELOW:

PERSONAL SERVICE

(1) ☐ by personally delivering to and leaving a true copy thereof with the above defendant(s) on the 8th day of March, 19 74, at 12:55 ~~XX~~ AM(PM), at 502 Federal Court House, 68 Court St., Buffalo, N. Y. (address or place of service), and that he (she) knew the person(s) so served to be the person(s) described as the said defendant(s) therein.

SUITABLE AGE

(2) ☐ A. by personally delivering to and leaving a true copy thereof with _____ (name of person served) a person of suitable age and descretion, on the _____ day of _____, 19__, at _____ AM(PM), at _____ (address or place of service) the–dwelling place–usual place of abode–place of business within the State of New York

SUBSTITUTED SERVICE

OR ☐ B. by affixing a true copy thereof to the defendant's door at _____ (address or place of service)

(3) the–dwelling place–usual place of abode–place of business within the State of New York on _____ day of _____, 19__, at _____ AM(PM)

AND by mailing a true copy of the same to the defendant(s) at _____ (address mailed to, street, No., City and State) _____ his (her) (their) last known residence or business address.

Deponent attempted to serve the defendant(s) pursuant to CPLR Sec. (3) on: (1) _____ day of _____, 19__, at _____ AM(PM), (2) _____ day of _____, 19__, at _____ AM(PM), (3) _____ day of _____, 19__, at _____ AM(PM).

CORPORATION

(4) ☐ by personally delivering to and leaving a true copy thereof with _____ (name of person served) at _____ (address or place of service) on _____ day of _____, 19__, at _____ AM(PM); deponent knew said corporation so served to be the corporation described in this action as the defendant therein, and that the said individual was the _____ (title of individual served) thereof.

The description of the person served pursuant to (1) or (2) above is: Sex F; Skin color W; Hair color Brown; Approx. age 60 yrs; Approx. weight 100 lbs.; Approx. height 5'; Other identifying features glasses

To my best knowledge, information and belief the said defendant at the time of service was not engaged in military service of the United States.

Sworn to before me this 8th day of March, 19 74

Vincent S. Emery, Jr.
Notary Public, Erie County, N.Y.
Commissioner of Deeds, Buffalo, N.Y.

VINCENT S. EMERY, JR.
Notary Public, State of New York
Qualified in Erie County
My Commission Expires March 30, 1975

Joseph A. Collins
Server